

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENARO D. HERNANDEZ,

Petitioner,

v.

SCOTT SPEER,

Respondent.

Case No. 25-26-BHS-MLP

REPORT AND RECOMMENDATION

On January 2, 2025, Petitioner Jenaro D. Hernandez filed an application to proceed *in forma pauperis* (“IFP”). (Dkt. # 1.) On January 8, 2025, this Court ordered Petitioner to show cause as to why his IFP application should not be denied or to pay the \$5.00 filing fee. (Dkt. # 4.) The Court observed that Petitioner’s IFP application reported a current balance of \$22.35 in his prison trust account, with average monthly receipts of \$161.17 and an average spendable balance of \$111.75. (*Id.* at 1.) Because it appeared that Petitioner had funds sufficient to pay the \$5.00 filing fee, the Court required that Petitioner pay the filing fee or provide the Court with an explanation as to why he cannot. (*Id.*)

1 On January 10, 2025, Petitioner filed a “Motion To Order To Show Cause” responding to
2 this Court’s Order. (Dkt. # 5.) In this response, Petitioner raises several issues but does not
3 address the deficiencies identified in this Court’s Order. (*Id.*)

4 The district court may permit indigent litigants to proceed IFP upon completion of a
5 proper affidavit of indigence. *See* 28 U.S.C. § 1915(a). “To qualify for *in forma pauperis* status,
6 a civil litigant must demonstrate both that the litigant is unable to pay court fees and that the
7 claims he or she seeks to pursue are not frivolous.” *Ogunsalu v. Nair*, 117 F. App’x 522, 523
8 (9th Cir. 2004), *cert. denied*, 544 U.S. 1051 (2005). To meet the first prong of this test, a litigant
9 must show that he or she “cannot because of his [or her] poverty pay or give security for the
10 costs and still be able to provide him[or her]self and dependents with the necessities of life.”
11 *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (internal alterations
12 omitted).

13 After careful consideration of Petitioner’s IFP application, the governing law, and the
14 balance of the record, the Court recommends Petitioner’s IFP application (dkt. # 1) be DENIED,
15 and that Petitioner be directed to pay the \$5.00 filing fee within 30 days of the adoption of this
16 Report and Recommendation. If no filing fee is paid, the Clerk should be directed to close the
17 case. A proposed order and judgment accompanies this Report and Recommendation.

18 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
19 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this
20 Report and Recommendation is signed. Failure to file objections within the specified time may
21 affect your right to appeal. Objections should be noted for consideration on the District Judge’s
22 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may
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1 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be
2 ready for consideration by the District Judge on **March 6, 2025**.

3 The Clerk is directed to send copies of this Report and Recommendation to Plaintiff and
4 to the Honorable Benjamin H. Settle.

5 Dated this 12th day of February, 2025.

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7 MICHELLE L. PETERSON
8 United States Magistrate Judge
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